

Agency Response to the Department of Planning and Budget’s Economic Impact Analysis (EIA) on 12 VAC 5-381 et seq.

Generally, VDH takes strong exception to statements made and conclusions drawn in the EIA regarding the proposed “Regulations for the Licensure of Home Care Organizations,” specifically those questioning VDH’s application of the home care law and the economic impact of the proposed regulation on the licensed entities. As the executive agency tasked with administering this statutorily authorized program, VDH will continue its commitment to administering it according to the law and nationally recognized standards of practice. Any questions regarding the economic viability of this program is solely within the purview of the General Assembly to determine. VDH takes exception to the more major disparities in the EIA related directly to the proposed regulation:

- 1) DPB’s comments do not take into consideration the improvements in medical technology that allows more acutely ill individuals to remain in their own homes rather than being hospitalized or admitted to nursing facilities. Because of the increased acuity levels of consumers receiving home care services, personnel providing care must have the training to recognize any degree of functional change, in addition to properly caring for that individual without causing harm to the individual or themselves. As the population ages, this will become more apparent and necessary.
 - a) With increasing national attention focused on concerns about the quality of care for the elderly and disabled it would be counter to reduce agency protections that have been in place for thirteen years. Examples of the concern include Senator Grassley’s congressional oversight committee and the Governor’s Task Force on Aging and public commitment to protections for the Commonwealth’s seniors.
- 2) Twelve hours is a standard training expectation within the human resource industry, VDH is requiring nothing more than is required by DSS in its own “Local Department Approved Standards,” not to mention the Centers for Medicare and Medicaid, as well as other states that require home care licensure. VDH strongly disagrees that the “ongoing education requirements” are “excessive ” and “likely to lead to a waste of resources” as continued training allows individuals to “grow in their jobs,” thus assuring a competent work force for the organization and greater services and protections for the patients receiving care from those organizations. In addition, the proposed regulation clearly allows for needed training in conjunction with supervisory visits, which results in reduced costs, not increased costs.
- 3) The stipulation that an RN provides supervision and oversight of services has been a regulatory requirement since 1991, so this is *not* a new requirement. This accepted policy for oversight has been a true quality of care safeguard. Section 32.1-162.12 (Regulations) of the Code requires that “such regulations governing the activities and services” of home care organizations address “quality control review procedures and arrangements for the continuing evaluation of the quality of care provided.” Only licensed professionals can perform this assessment.

- a) At the request of the provider community, the proposed regulation was developed to conform to the federal certification requirements, which stipulate RN oversight.
- 4) VDH takes issue with the statement: “It is not clear whether customers receiving only personal care services require the same level of protection as those receiving health-related services.” Clearly, the General Assembly addressed that concern by including personal care services as an adjunct to the home care services when the law was amended in 1991.
- 5) DPB is confusing the “professional management model” of care with the “consumer-driven model” of care. In the “professional management model,” workers are employed by public or private, non-profit or proprietary organizations that include home care agencies and agencies providing personal care services. These agencies are regulated by state licensing laws and assume responsibility for recruiting, screening, training, paying and supervising the workers, as well as the administrative costs associated with recruitment, training, supervision and payroll functions. Client needs are assessed, care plans developed to meet those needs, and workers assigned to the client. Although given choices, clients typically do not have direct control over the type of services provided, the choice of workers, or the work schedule.
 - a) The EIA does not point out that the DSS’s adult service entities are currently operating in violation of the law by providing services without being licensed as required. Currently, the law does not recognize an exemption for DSS’s practices, as it does with federally certified programs under Medicare and Medicaid. Nor does the EIA explain that DMAS has requirements for both “professional management model” as well as and the “consumer-driven model” of care.
- 6) Statements such as “the requirements can be expected to introduce unnecessary compliance costs and consequently create economic inefficiencies” and “to purchase a more expensive type of care than [customers]want or need or to go without altogether” are misleading and speculative. In the past year, there has been a 31% increase in the number of entities requesting licensure, clearly an indication that home care has become an accepted and well-understood part of the health care system. With the burgeoning of the home care industry as the population ages it is necessary to have appropriate and adequate standards in place to assure consistency across the industry. VDH believes the proposed regulation accomplishes those protections, without being overly burdensome to providers.

In summary, VDH and the State Health Commissioner are committed to continuing its efforts in administering the home care program effectively, as Virginia law authorizes. The agency’s mission requires nothing less. Until such time as the General Assembly elects to amend and reenact the home care statutes, VDH will continue to advocate for the protection of vulnerable individuals receiving health care services in their homes and out of the scrutiny of public review. VDH welcomes the opportunity to allow those affected by the proposed regulation to comment in order to modify any requirement, if necessary. In the two exposure drafts sent to interested parties in preparation for complying with the Administrative Process Act (APA), respondents have not commented that the regulation is confusing or overly burdensome as written.